

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONG MOUA,

Petitioner,

v.

WARDEN, USP-ATWATER,

Respondent.

No. 1:22-cv-00948-JLT-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 11)

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ENTER JUDGMENT AND CLOSE CASE

[NO CERTIFICATE OF APPEALABILITY IS
REQUIRED]

The assigned magistrate judge issued findings and recommendations to grant Respondent's motion to dismiss and to dismiss the petition for failure to state a claim. (Docs. 8, 11.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within 30 days after service. On December 23, 2022, Petitioner filed objections to the Findings and Recommendations. (Doc. 12.) Respondent did not file a reply.

According to 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the Magistrate Judge's Findings and Recommendations are supported by the record and proper analysis. As correctly determined by the Magistrate Judge, Petitioner's

arguments are foreclosed by *United States v. Lemoine*, 546 F.3d 1042 (9th Cir. 2008). Contrary to Petitioner's suggestion (Doc. 12 at 1), *Ward v. Chavez*, 678 F.3d 1042 (9th Cir. 2012), did not overrule *Lemoine* and does not control here because the court of conviction set a repayment schedule in Petitioner's case.

The Court notes that in the event a notice of appeal is filed, a certificate of appealability will not be required because this is not a final order in a habeas proceeding in which the detention complained of arises out of process issued by a state court. *Forde v. U.S. Parole Commission*, 114 F.3d 878 (9th Cir. 1997); *see Ojo v. INS*, 106 F.3d 680, 681-682 (5th Cir. 1997); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). Thus, the Court **ORDERS**:

1. The Findings and Recommendations issued on November 23, 2022, (Doc. 11), are **ADOPTED IN FULL**.
2. Respondent's motion to dismiss (Doc. 8), is **GRANTED**.
3. The petition for writ of habeas corpus is **DISMISSED** with prejudice.
4. The Clerk of Court is directed to enter judgment and close the case.
5. In the event a notice of appeal is filed, no certificate of appealability is required.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: **January 9, 2023**


UNITED STATES DISTRICT JUDGE